

SB 1068, SD1

**RELATING TO
PROCUREMENT.**

LAB, FIN

SB1068 SD1



Submit Testimony

Measure Title: RELATING TO PROCUREMENT.

Report Title: Procurement Officers; Competitive Sealed Bidding; Subcontractors; Licensing

Description: Exempts from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board. (SD1)

Companion: [HB826](#)

Package: None

Current Referral: LAB, FIN

Introducer(s): KIM, HARIMOTO, RIVIERE, Dela Cruz, Espero, Gabbard, Galuteria, Green, Ihara, Keith-Agaran, Nishihara

Sort by Date		Status Text
1/25/2017	S	Introduced.
1/25/2017	S	Passed First Reading.
1/27/2017	S	Referred to GVO/CPH.
2/7/2017	S	The committee(s) on GVO/CPH has scheduled a public hearing on 02-10-17 9:35AM in conference room 229.
2/10/2017	S	The committee on GVO deferred the measure.
2/10/2017	S	The committee on CPH deferred the measure.
2/27/2017	S	The committee(s) on GVO/CPH will hold a public decision making on 03-01-17 9:00AM in conference room 229.
3/1/2017	S	The committee(s) on GVO recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in GVO were as follows: 3 Aye(s): Senator(s) Kim, Galuteria, Tokuda; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Ruderman, K. Rhoads.

3/1/2017	S	The committee(s) on CPH recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in CPH were as follows: 5 Aye(s): Senator(s) Baker, Nishihara, S. Chang, Espero, Kidani; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Ihara, Ruderman.
3/3/2017	S	Reported from GVO/CPH (Stand. Com. Rep. No. 711) with recommendation of passage on Second Reading, as amended (SD 1) and placement on the calendar for Third Reading.
3/3/2017	S	Report adopted; Passed Second Reading, as amended (SD 1).
3/3/2017	S	48 Hrs. Notice 03-07-17.
3/7/2017	S	Passed Third Reading, as amended (SD 1). Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/7/2017	H	Received from Senate (Sen. Com. No. 334) in amended form (SD 1).
3/9/2017	H	Pass First Reading
3/9/2017	H	Referred to LAB, FIN, referral sheet 27
3/17/2017	H	Bill scheduled to be heard by LAB on Tuesday, 03-21-17 10:00AM in House conference room 309.

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the delivery and
2 award of public works construction projects can be hindered by
3 bid challenges resulting in a lapse in funding and other
4 procurement issues. Many times there are communications from a
5 bidder indicating flaws or technical discrepancies in a low
6 bidder's proposal before a determination has been made that the
7 low bidder is the responsible and responsive bidder. Several
8 recent informal inquiries and bid challenges related to
9 subcontractor listing and licensing issues have caused major
10 delays and cost increases for public works construction
11 projects.

12 The legislature further finds that due to the large number
13 of licenses available, it has become increasingly difficult for
14 general contractors to verify whether a subcontractor has the
15 proper license to perform the type of work that the
16 subcontractor has been contracted to perform. Ensuring that
17 subcontractors meet all of the necessary requirements to perform



1 contracted work on State and county projects will address
2 licensing concerns and greatly minimize bid challenges
3 pertaining to the verification of subcontractor qualifications
4 and licensing.

5 The purpose of this Act is to:

6 (1) Exempt from disqualification or rejection a bid that
7 includes a listed subcontractor whose license is not
8 valid at the time of the bid due to a lapse in
9 continuous insurance and bond coverage if certain
10 conditions are met; and

11 (2) Require procurement officers to report any unlicensed
12 activity at the time of the bid to the contractors
13 license board.

14 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is
15 amended by amending subsection (g) to read as follows:

16 "(g) Correction or withdrawal of inadvertently erroneous
17 bids before or after award, or cancellation of invitations for
18 bids, awards, or contracts based on such bid mistakes, shall be
19 permitted in accordance with rules adopted by the policy board.
20 After bid opening no changes in bid prices or other provisions



1 of bids prejudicial to the interest of the public or to fair
2 competition shall be permitted[-]; provided that:

3 (1) If a procurement officer determines that a listed
4 subcontractor's license under chapter 444 is not valid
5 at the time of the bid due to a lapse in continuous
6 insurance and bond coverage under section 444-11.1,
7 the bid may not be disqualified or rejected if:

8 (A) The subcontractor was previously licensed under
9 chapter 444 prior to the time of bid;

10 (B) Prior to award, the subcontractor submits
11 satisfactory proof of continuous insurance and
12 bond coverages under section 444-11.1 to the
13 contractors license board; and

14 (C) Prior to award, the subcontractor has its license
15 under chapter 444 restored to a continuous
16 current and active status from at least the time
17 of bid to the time of award; and

18 (2) The procurement officer shall report any unlicensed
19 activity at the time of the bid to the contractors
20 license board.



1 Except as otherwise provided by rule, all decisions to permit
2 the correction or withdrawal of bids, or to cancel awards or
3 contracts based on bid mistakes, shall be supported by a written
4 determination made by the chief procurement officer or head of a
5 purchasing agency."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

9



Report Title:

Procurement Officers; Competitive Sealed Bidding;
Subcontractors; Licensing

Description:

Exempts from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
MARA SMITH
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT
March 21, 2017, 10:00 AM

SENATE BILL 1068 SD1
RELATING TO PROCUREMENT

Chair Johanson, Vice-Chair Holt, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1068 SD1.

The SPO opposes this bill.

- A. Section 2, Page 3, Line 1, (1) states that state procurement personnel may not disqualify or reject licenses due to lapse in continuous insurance and bond coverages.

This is duplicative statute that is already handled in HRS 444 for Contractors and its corresponding Rules. Specific statute for licenses should remain in the statute of its origin. Repeating this code in the Procurement code dilutes the Procurement Code and creates multiple areas to refer to which causes confusion.

HAR, Title 16 for Department of Commerce and Consumer Affairs, Chapter 77, Subchapter 10 title: Suspension, Revocation, Dissociation, Dissolution: Alternatives in lieu of revocation or suspension; states in HAR 16-77-63(b): "(b) To reinstate a license which was under suspension, the licensee may, in addition to meeting any conditions imposed for reinstatement, be required to show proof of workers' compensation, liability, and property damage insurance, submit a current financial statement, credit report, tax clearance, and as added proof of financial integrity, a bond in an amount to be determined by the board.

In addition, the Contractor's Licensing Board (CLB) has a standing policy that a curable timeframe of 60 days is appropriated to the license, and it is my understanding that the State adheres and allows for this.

§444-11.1 Requirements to maintain license. (a) A licensed contractor shall have and maintain in full force and effect the following:

- (1) Workers' compensation insurance; unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
 - (2) Liability insurance from an insurance company or agency for comprehensive personal injury and property damage liability; and
 - (3) Bond when required by the board, under section 444-16.5.
- (b) Failure, refusal, or neglect of any licensed contractor to maintain in full force and effect, the applicable workers' compensation insurance, liability insurance, or bond shall cause the automatic forfeiture of the license of the contractor effective as of the date of expiration or cancellation of the contractor's workers' compensation insurance, liability insurance, or bond.
- (c) The board shall not restore the forfeited license until satisfactory proof of continuous insurance and bond coverages is submitted to the board as required by this section.
- (d) Failure to restore a license within sixty days after the date of forfeiture shall result in the forfeiture of all fees and shall require the person to apply as a new applicant.
- (e) The board may assess a fee not to exceed \$1,000, impose a bond, or restrict the license as a condition for the restoration of a license forfeited pursuant to this section.
- (f) A licensee may, within sixty days after receipt of the notification of the forfeiture, request an administrative hearing to review the forfeiture pursuant to chapter 91.

- B. Section 2, Page 3, Line 6, (A) states a bid may not be disqualified or rejected if the subcontractor was previously licensed.

Procurement Officers who access the CLB database see a snapshot of the licensing status for that day and cannot tell from the information given whether this subcontractor was previously licensed for a day before or a year before. Thus, access to this information is not readily available to the procurement workforce.

- C. Section 2, Page 3, Line 8, (B) states prior to award subcontractors submits proof of continuous insurance and bond coverages.

The government does not have privity with a prime contractor's subcontractors. Any submission by the prime contractor of a subcontractor with a 'forfeited' license should include proof of continuous insurance and bond coverages AT time of bid. It is the responsibility of the prime contractor to submit responsible, licensed subcontractors on its bid proposal. The Government should not be communicating at all with a prime's subcontractors at the bid evaluation stage.

- D. Section 2, Page 3, line 12, (C) states a repeat of what has been already covered in Section A shown above.

- E. Section 2, page 3, line 16, (2) states the Procurement Officer shall report any unlicensed activity to the CLB.

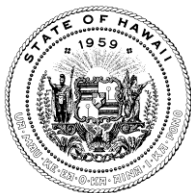
What is the definition of unlicensed activity and what is the scope of 'any' mean? In addition, through what mechanism would this report be made? This is a mandate that is too large and will be highly time-consuming to the Procurement workforce who are already under the gun to award in a timely manner. The Regulated Industries Complaints Office (RICO) already has this responsibility as their focal mission: "The Regulated Industries Complaints Office (RICO) investigates allegations of professional misconduct by licensees and unlicensed activity that may be occurring in the State."

Government Burden and Contractor Responsibility: The SPO is concerned that this action will add more burden to the procurement specialist and transfer the prime contractor's responsibility to be accountable for proposing licensed subcontractors. The process of checking to see if all subcontractors are licensed could delay a project if the listed subcontractors were unable to become compliant between bid opening and award. This would mean that the procurement specialist would now have to evaluate the 2nd low bidder's subcontractors for compliance. Would the second contractor then have the same time allowances as the first?

Defining 'Time of Award' in respect of the intent of this bill: There can be a range of lag time (typically 3 days to 90 days), between time of bid submittal to time of award. When is the license confirmed? Does the Procurement Specialist have to scan all licenses the night before? The day of? What about all the routings it needs before it's officially awarded? Do we scan before the AG reviews the award for form and function? Or after? It may become a issue of daily reviews until award? What if the award takes six months plus to be effected? SPO recommends a considered definition of this phrase for the intent of this bill, to include a time range constraint.

Exemption from Ch 444: During last Legislative Session, the Regulated Industries Complaints Office (RICO), suggested that procurement specialists might be found to be 'aiding and abetting' prime contractors who submitted unlicensed subcontractors. Thus, verbiage that waives procurement specialists from this requirement is recommended. Allowing for licenses to be valid at time of bid will require a clear and express legislative exemption from the HRS Ch 444 interpretation that licensing must be in place at the time of submission of proposal.

Thank you.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR AND PUBLIC EMPLOYMENT

TWENTY-NINTH STATE LEGISLATURE
REGULAR SESSION, 2017

TUESDAY, MARCH 21, 2017
10:00 A.M.

TESTIMONY ON SENATE BILL NO. 1068 S.D.1
RELATING TO PROCUREMENT

TO THE HONORABLE AARON LING JOHANSON, CHAIR,
AND TO THE HONORABLE DANIEL HOLT, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 1068 S.D.1, Relating to Procurement. My name is Daria Loy-Goto and I am the Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers comments on this bill.

Senate Bill No. 1068 S.D.1 provides that a procurement officer who determines that a listed subcontractor's license is not valid at the time of bid due to a lapse in continuous insurance and bond coverage may not disqualify or reject the

bid if certain conditions are met. The measure also requires a procurement officer to report any unlicensed activity at the time of bid to the Contractors License Board ("Board").

RICO understands the Board and the bill's proponent are continuing to discuss proposed language, and notes that allowing procurement officers to consider a subcontractor's license as valid at bidding only in the limited circumstance where a license has lapsed due to a loss of insurance or bond coverage, provided the license is current at the time work starts, is consistent with Board policy. RICO believes that allowing a subcontractor to restore a license for reasons other than a lapse in insurance or bond coverage is contrary to Board policy.

RICO is aware that the Board is proposing language to clarify the procurement officer's requirement to report unlicensed activity and defers to the Board on this proposed amendment. As the enforcement arm for the Board, RICO also believes that requiring procurement officers to report to the Board any unlicensed activity will promote investigation and prosecution of unlicensed activity.

Thank you for the opportunity to testify on Senate Bill No. 1068 S.D.1. I will be happy to answer any questions the Committee may have.



ELECTRICAL CONTRACTOR'S ASSOCIATION OF HAWAII

NECA Hawai'i Chapter
1286 Kalani Street, Suite B-203
Honolulu, Hawai'i 96817
PH: (808) 847-7306
FX: (808) 841-8096
Email: ecah@ecahi.com



March 20, 2017

To: House Committee on Labor & Public Employment
Honorable Chair Aaron Johanson & Vice Chairman Daniel Holt

From: Al Itamoto, Executive Director
Electrical Contractors Association of Hawaii
National Electrical Contractors Association, Hawaii Chapter

Subject: SB 1068, SD1 Relating to Procurement

Notice of Hearing

Date: Tuesday, March 21, 2017
Time: 10:00 AM
Place: Conference Room 309
State Capitol
415 South Beretania Street

Dear Chairs Johnason, Holt and Committee members:

The Electrical Contractors Association of Hawaii (ECAH) is a non-profit association representing over 100 electrical contractors doing business in the State of Hawaii. ECAH **Supports SB1068, SD1 with amendments** and **oppose to this bill as written**. The intent and purpose of SB 1068, SD1 that would allow the procurement office to consider an invalid subcontractor's license if it can be remedied must have some time constraints so as not to be abused. We would support this bill if for Section 2, (A) the subcontractor was previously licensed at least 60 days prior to the bid time. In Section 2, (B), the subcontractor should provide proof of insurance and bonding within 10 working days after bid opening. And in Section 2, (C), the subcontractor should restore its license within 30 days of the bid opening and should include that the listed subcontractor must have been previously licensed in the classification listed to perform the scope of work during the current license year or prior to the bid due date. This will ensure that the listed subcontractor will not be seeking the correct license after the bid due date.

Based on the above, ECAH **Supports with amendments** the passage of SB 1068, SD1.

Thank you for the opportunity to provide testimony on this issue.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 21, 2017

TO: HONORABLE AARON LING JOHANSON, CHAIR, HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **SUPPORT OF S.B. 1068, SD1 RELATING TO PROCUREMENT.** Exempts from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board. (SD1)

HEARING

DATE: March 21, 2017
TIME: 10:00 a.m.
PLACE: Capitol Room 309

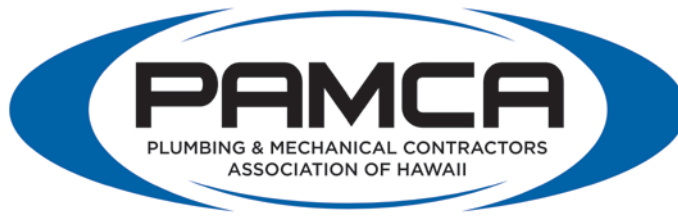
Dear Chair Johanson, Vice Chair Holt, and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA **supports** S.B. 1068, SD1, Relating to Procurement, which proposes to amend Section 103D-302(g) allowing the procurement officer the ability to determine whether a listed subcontractor's license is valid at award, which would prevent a bid from being thrown out for reasons related to a listed subcontractor's status based on Chapter 444 requirements.

This measure would still require that all listed subcontractors be properly licensed at time of award and throughout the project. Further this measure would preclude a prime bidder from being penalized and found non-responsive because its subcontractor may have had an issue with their compliance under Chapter 444, HRS regarding requirements of workers compensation, insurance, and bond if they are able to confirm continuous coverage between bid time and award of the project. While GCA would prefer that the bill address a Responsible Managing Employee's (RME) license status that could be in question due to unexpected death or dissociation of an RME, we understand that some from the industry has concerns about affecting that provision of Chapter 444.

For these reasons, we respectfully request that you pass HB 1068, HD1 to increase efficiency in the procurement of public works construction. Thank you for your consideration.



1088 BISHOP STREET #408
HONOLULU, HI 96813
PH: (808) 597-1216

GREGG S. SERIKAKU
EXECUTIVE DIRECTOR

Via Email

March 17, 2017

Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice-Chair
House of Representatives Committee on Labor and Public Employment
The Twenty-Ninth Legislature, Regular Session of 2017

Chair Johanson, Vice Chair Holt, and Members of the Committee:

SUBJECT: SB1068 SD1 Relating to Procurement

My name is Gregg Serikaku and I am the Executive Director of the Plumbing and Mechanical Contractors Association of Hawaii. The Association for which I speak is **opposed to SB1068 SD1 as currently written**. We would like to propose the following amendments for your consideration:

- Proposed Section (1)(A) should be amended as follows:

(A) The subcontractor was previously licensed under chapter 444 **in the scope of work listed within the 60 days** prior to the time of bid;

A fixed limit of 60 days would ease the burden on the procurement officers and the licensing division personnel of having to research the validity of older licenses that are in excess of 60 days.

- Proposed Section (1)(B) should be amended as follows:

(B) **Within 10 days after bid opening,** [~~Prior to award,~~] the subcontractor submits satisfactory proof of continuous insurance and bond coverages under section 444-11.1 to the contractors license board; and

A listed subcontractor should have no problem providing satisfactory proof of continuous insurance and bond coverage within a 10 day period after bid opening, and this should help to minimize delays in the procurement process.

- Proposed Section (1)(C) should be amended as follows:

(C) **Within 30 days after bid opening,** [~~Prior to award,~~] the subcontractor has its license under chapter 444 restored to a continuous current and active status [~~from at least the time of bid to the time of award~~]; and

A listed subcontractor should be able to restore its license within 30 days after bid opening. Further, a fixed time period is recommended to maintain an efficient procurement process and prevent delays in project awards.

Thank you for the opportunity to submit our suggested changes.

Respectfully yours,

A handwritten signature in black ink that reads "Gregg S. Serikaku".

Gregg S. Serikaku
Executive Director

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

March 21, 2017

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1068, SD 1 - RELATING TO PROCUREMENT

Chair Johanson and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii and we conditionally can support this bill with amendments. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We understand and sympathize with the situation where only technical changes need to be made to a subcontractor listing in order for a bid to be deemed responsive and therefore valid and we agree that it is a waste of time and effort on everyone's part to reject such bids for such minor technicalities. We are however treading a fine line between legal contractors and illegal contractors.

We are willing however to discuss this matter and look towards legislation because it seems that the general contractors primary complaint about subcontractor listing has been that everything happens in such a rush that they feel totally incompetent to handle the rush of information in an orderly fashion and oftentimes make errors to the detriment of all. Our subcontractors often act as prime contractors and it seems awfully strange to us that we don't get a similar complaint from them when they do act as prime contractors, nevertheless we are willing to address the issue.

This bill addresses that situation however we think it needs some time limitations on it. We would not want to see a situation where a subcontractor who was previously licensed be considered while he was licensed two (2) years ago. We would not want to see a situation where the subcontractor is able to submit satisfactory proof of continuous insurance but he does that a year later and we would not want to see a situation where a contractor gets his license restored to active status but also does that a year later. Bids for projects can oftentimes be delayed and sometimes for quite lengthy periods. Contractor licenses are renewed on an every two (2) year basis and therefore we think limitations such as we have proposed in our H.D. 1 of sixty (60) days and ten (10) days should more than satisfy the stated needs of general contractors without allowing for abuse. Based on that we can then tentatively approve this bill with our amendments provided that it becomes the prime reform vehicle for this area.

Thank you for the opportunity to testify.

Proposed H.D.1

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the delivery and award of public works construction projects can be hindered by bid challenges resulting in a lapse in funding and other procurement issues. Many times there are communications from a bidder indicating flaws or technical discrepancies in a low bidder's proposal before a determination has been made that the low bidder is the responsible and responsive bidder. Several recent informal inquiries and bid challenges related to subcontractor listing and licensing issues have caused major delays and cost increases for public works construction projects.

The legislature further finds that due to the large number of licenses available, it has become increasingly difficult for general contractors to verify whether a subcontractor has the proper license to perform the type of work that the subcontractor has been contracted to perform. Ensuring that subcontractors meet all of the necessary requirements to perform contracted work on State and county projects will address licensing concerns and greatly minimize bid challenges pertaining to the verification of subcontractor qualifications and licensing.

The purpose of this Act is to:

(1) Exempt from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverage if certain conditions are met; and

(2) Require procurement officers to report any unlicensed activity at the time of the bid to the contractors license board.

SECTION 2. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes, shall be permitted in accordance with rules adopted by the policy board. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted[-]; provided that:

(1) If a procurement officer determines that a listed subcontractor's license under chapter 444 is not valid at the time of the bid due to a lapse in continuous insurance and bond coverage under section 444-11.1, the bid may not be disqualified or rejected if:

(A) The subcontractor was previously licensed under chapter 444 within 60 days prior to the time of bid;

(B) Within 10 days following the opening of bids [Prior to award], the subcontractor submits satisfactory proof of continuous insurance and bond coverages under section 444-11.1 to the contractors license board; and

(C) Within 60 days following the opening of bids [Prior to award], the subcontractor has its license under chapter 444 restored to a continuous current and active status from at least the time of bid to the time of award; and

(2) The procurement officer [may] shall report any unlicensed activity at the time of the bid to the contractors license board.

Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the chief procurement officer or head of a purchasing agency."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

Report Title:

Procurement Officers; Competitive Sealed Bidding; Subcontractors; Licensing

Description:

Exempts from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions within a certain time period. Permits procurement officers to report any unlicensed activity at the time of the bid to the contractors license board.

(HD 1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

IRON WORKERS STABILIZATION FUND

March 20, 2017

Aaron Ling Johanson, Chair
Committee on Labor & Public Employment
House of Representatives
State Capitol
Honolulu, Hawai'i 96813

Re: SB1068 – Relating to Procurement

Aloha Chair Johanson and Members:

We do **NOT SUPPORT** the bill.

SB 1068, SD1 exempts from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions and also requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board.

This bill contradicts the standing policy of the Contractors License Board that a person must be licensed at the time of a bid submission. Further, such a change will place an additional burden upon the state procurement specialist whom would be subsequently responsible to check for license status at the time of award. Also, the time of award is not clearly identified in either statute or administrative rule, and as such, would cause confusion in when the state procurement specialist would need to check license status. Finally, the subcontractor listing has not been a significant problem in the awards of contracts where a low bidder is displaced due to an error or omission – only approximately one percent of construction projects awarded were affected in fiscal years 2013 and 2014 (State Procurement Task force report, February 3, 2016).

Mahalo.

**PRESENTATION OF THE
CONTRACTORS LICENSE BOARD**

TO THE HOUSE COMMITTEE ON
LABOR & PUBLIC EMPLOYMENT

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Tuesday, March 21, 2017
10:00 a.m.

TESTIMONY ON SENATE BILL NO. 1068, S.D. 1, RELATING TO PROCUREMENT.

TO THE HONORABLE AARON LING JOHANSON, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Candace Ito, Executive Officer for the Contractors License Board ("Board"). Thank you for the opportunity to provide comments on Senate Bill No. 1068, S.D. 1, which proposes that a bid from a subcontractor with an invalid license due to the loss or insurance or bond, may not be disqualified or rejected if the subcontractor restores its license in accordance with HRS section 444-11.1 prior to award; and requires the procurement officer to report unlicensed activity.

In order to clarify the procurement officer's requirement to report unlicensed activity, the Board proposes, for the Committee's consideration, the following amendment to SECTION 2, on page 3, lines 18 through 20:

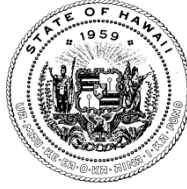
"(2) If a bid is disqualified or rejected because the subcontractor failed to meet the requirements of paragraph (g)(1) of this section, [The] the procurement officer shall report any unlicensed activity [at the time of the bid] to the contractors license board."

Thank you for the opportunity to provide comments on Senate Bill No. 1068, S.D. 1.

SB 1068, SD1

Late Testimony

DAVID Y. IGE
GOVERNOR



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 21, 2017

10:00

State Capitol, Room 309

LATE

LATE

S.B. 1068, S.D. 1
RELATING TO PROCUREMENT

House Committee on Labor and Public Employment

The Department of Transportation (DOT) provides the following **comments** to the proposed bill which proposes to exempt rejection of a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board.

The DOT comments that the following proposed language to be deleted: Line 18 thru line 20, “[t]he procurement officer shall report any unlicensed activity at the time of the bid to the contractors license board.”

The required responsibility to report unlicensed activity at bid time should not fall on the procuring agency.

Thank you for the opportunity to provide testimony.



STEEL FABRICATORS AND ERECTORS OF HAWAII

P.O. Box 30062 • Honolulu, Hawaii 96820-0062

March 20, 2017

LATE

Re: SB1068, SD1, Relating to Procurement

Hearing – March 21, 2017, at 10:00 am

Conference Room 309

LATE

Aaron Johanson, Chair – LAB

Mark Nakashima, Chair – EDB

LATE

Chairs Johanson and Nakashima and Members:

Thank you for the opportunity to testify on this measure. The Steel Fabricators and Erectors of Hawaii represent all companies in this business that are signatories to unions in this business.

Like our testimony in SB1070, SD1, we are against this measure as drafted. Since the general contractors have 24 hours to consider all bids submitted by subcontractors, this gives the general contractors ample time to submit their formal bids to the contracting agencies.

Rupert Chun, President



HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

**TESTIMONY OF HAWAII LECET
CLYDE T. HAYASHI – DIRECTOR**

LATE

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair

LATE

NOTICE OF HEARING

LATE

DATE: Tuesday, March 21, 2017
TIME: 10:00 AM
PLACE: Conference Room 309

TESTIMONY ON SENATE BILL NO. 1068 SD1, RELATING TO PROCUREMENT.

ALOHA COMMITTEE CHAIR JOHANSON, COMMITTEE VICE CHAIR HOLT, AND HOUSE COMMITTEE MEMBERS ON LABOR AND PUBLIC EMPLOYMENT:

My name is Clyde T. Hayashi, and I am the Director of Hawaii LECET. Hawaii LECET is a labor-management partnership between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Mahalo for the opportunity to testify **SUPPORTING THE INTENT of Senate Bill No. 1068 SD1**. This bill proposes to exempt from disqualification or rejection a bid that includes a listed subcontractor whose license is not valid at the time of the bid due to a lapse in continuous insurance and bond coverages if the subcontractor meets certain conditions. Requires procurement officers to report any unlicensed activity at the time of the bid to the contractors license board.

Many times, contractors / subcontractors are unaware that they have failed to provide their insurance and bond updates to the contractors license board. Failing to do so in a timely manner will cause their license to be forfeited and deemed non-responsive. The board, however, does allow a contractor / subcontractor to restore its license if the contractor / subcontractor shows no break in continuous insurance or bond coverage.

This bill will allow a bid to remain responsive should its listed subcontractor was deemed to have a forfeited license at the time of the bid, and is able to restore its license if there is no break in continuous insurance or bond coverage prior to award. This bill may also reduce bid protests and may prevent the State from overpaying if the bid is awarded to non-low bidder.

For this reason, we **support the intent of SB 1068 SD1** and hopes it passes this committee.